

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Amendment of Rules Governing)
Procedures to Be Followed When)
Formal Complaints Are Filed Against)
Common Carriers)

CC Docket No. 96-238

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COMMENTS OF AMERITECH

I. Introduction

Ameritech respectfully submits these Comments in the above-captioned matter. In general, the tentative conclusions set forth in the Notice of Proposed Rule Making¹ will provide a strong foundation for the fair adjudication of formal complaints, and will do so in keeping with the statutory requirements in the Telecommunications Act of 1996² relating thereto. The following comments suggest several procedural changes that would make the adjudication process more equitable and efficient.

¹ In the Matter of Implementation of the Telecommunications Act of 1996. Amendment of Rules Governing When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, Rel. November 27, 1996, Notice of Proposed Rulemaking (hereinafter "NPRM")

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. 151 et seq. (1996) (hereinafter "Act").

II. Discovery Matters

Ameritech supports the Commission's tentative conclusion that the procompetitive goals of the Act would be enhanced by prohibiting the filing of complaints based solely on "information and belief."³ A complaint submitted without factual support simply cannot be useful in reaching the ultimate decision as to its merits. Ameritech also supports the related position that limited, focused discovery, rather than "discovery as a matter of right,"⁴ is the most effective means of developing the issues for adjudication of a complaint on its merits. Experience supports the fact, as aptly noted in the NPRM, that parties typically relied upon only a small percentage of the documents and materials exchanged through discovery."⁵ To require the production by the parties of "all relevant documents" would effectively permit unlimited discovery, akin to the "fishing expeditions" that often result in the context of civil litigation.

A more appropriate structure is suggested in Section 252(b)(2) of the Act, as applicable to compulsory arbitration of interconnection disputes. In order to make state commissions' arbitration of such disputes manageable in both scope and scale, the Act provides that each party must produce with "all relevant documentation concerning - (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other

³ NPRM at 17 (para. 38).

⁴ NPRM, at 21 (para. 50).

⁵ NPRM, at 23 (para. 53).

issue discussed and resolved by the parties.”⁶ This approach could serve as a useful substitute for traditional discovery vehicles in the complaint process, by effectively narrowing the exchange of documentation to include those truly relevant to the essence of the parties’ disagreement.

III. Cost Recovery

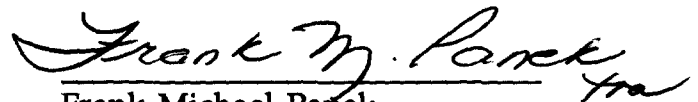
While the suggestion that the parties could stipulate to specific cost-recovery mechanisms before the commencement of a complaint action has, on its face, a certain inherent fairness of logic, this approach carries with it a significant risk to the decision process. In practical effect, such provisions can create a temptation for parties to seek to convince the decisionmaker that, on a policy basis, it should find grounds to award enough money to the “losing” party to offset the costs of discovery. While the final decision on the merits is not necessarily affected by this temptation, the very potential for receiving such an “offsetting” award could become an impediment to the development of facts necessary to the effective adjudication of the matter at hand. In other words, an up-front agreement on cost recovery issues could potentially determine a substantive issue in the proceeding. A better solution would be to leave discovery-related cost recovery issues up to the discretion of the finder of fact. Such a provision, perhaps coupled with the discretion to award financial damages for the filing of frivolous complaints, would help to ensure fair adjudication on the merits, without mixing in financial constraints at too early a stage of the process.

⁶ 47 U.S.C. 252(b)(2)(A).

IV. Conclusion

For the above-mentioned reasons, the Commission should adopt these minor modifications to its procedures governing formal complaints against common carriers. These changes will provide for the filing, adjudication and processing of such complaints in a more efficient and effective manner.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek". The signature is written in dark ink and is positioned above the printed name and address.

Frank Michael Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6064

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